

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JERMAINE JENNINGS,

**No. 6:05-CR-06128 (MAT)**

**No. 6:16-CV-06319 (MAT)**

Movant,

-vs-

**DECISION AND ORDER**

UNITED STATES OF AMERICA,

Respondent.

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## **I. Introduction**

Following a jury trial, movant Jermaine Jennings was convicted of possession with intent to distribute cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and possession of ammunition by a felon, in violation of 18 U.S.C. § 922(g)(1). On the drug charge, Jennings was sentenced, as a career offender pursuant to U.S.S.G. § 4B1.1(a), to 300 months imprisonment. After the Court (Siragusa, J.) extended Jennings' time for filing a motion pursuant to 28 U.S.C. § 2255, Jennings filed a § 2255 motion on March 5, 2010. See doc. 89. The Court denied Jennings' motion on April 30, 2014 (see doc. 95), after which Jennings moved for reconsideration on February 11, 2015. See doc. 96.

Jennings filed a second § 2255 motion, pursuant to Johnson v. United States, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2551 (2015) ("the Johnson motion"), on May 2, 2016, after which the Second Circuit granted him permission to file this second and successive petition. This Court denied Jennings' Johnson motion by Decision and Order dated May 22, 2017. See doc. 110. In that same decision, this Court also denied Jennings' outstanding motion for reconsideration of his

first § 2255 motion (doc. 96). On June 14, 2017, Jennings filed a notice of appeal with the Second Circuit. See doc. 111. Subsequently, on July 5, 2017, Jennings moved to alter or amend this Court's Decision and Order dated May 22, 2017. The Second Circuit has advised Jennings and this Court that it has stayed Jennings' appeal pending resolution of Jennings' July 5, 2017 motion to alter or amend.

## **II. Discussion**

The instant motion to alter or amend the judgment takes issue with Jennings' *first* § 2255 motion and does not request reconsideration of this Court's decision with respect to his Johnson motion. Initially, the Court notes that Jennings' motion for reconsideration of his first § 2255 motion, which is construed as a motion to alter or amend pursuant to Federal Rule of Civil Procedure 59(e), see Richard v. Digneau, 126 F. Supp. 3d 334, 337 (W.D.N.Y. 2015), was filed on February 11, 2015, more than nine months after the challenged order was rendered on April 30, 2014. Thus, in addition to the reasons given by this Court for rejecting that motion for reconsideration, it was also due to be denied as untimely pursuant to Local Rule of Civil Procedure 7(d)(3) and Fed. R. Civ. P. 59(e). Richard, 126 F. Supp. 3d at 337 (noting that Local Rule 7(d)(3) provides that a motion for reconsideration "must be filed and served no later than twenty-eight (28) days after the entry of the challenged judgment, order, or decree and, pursuant to Fed. R. Civ. P. 6(b)(2), no extension of time will be granted").

Additionally, the instant motion to alter or amend pursuant to Rule 59(e) was filed on July 5, 2017, more than 28 days after the challenged order was entered on May 22, 2017. This motion is therefore denied as untimely, and, for the reasons set forth in this Court's Decision and Order dated May 22, 2017 (doc. 110), it is also denied as meritless.

### **III. Conclusion**

For the reasons set forth above, Jennings' motion to alter (doc. 113) or amend is denied.

**ALL OF THE ABOVE IS SO ORDERED.**

**S/Michael A. Telesca**

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HON. MICHAEL A. TELESCA  
United States District Judge

Dated: July 19, 2017  
Rochester, New York.